

**CASES CONCERNING QUESTIONS OF
INTERPRETATION AND APPLICATION OF THE 1971 MONTREAL
CONVENTION ARISING FROM THE AERIAL INCIDENT AT LOCKERBIE**

**(Libyan Arab Jamahiriya v United Kingdom)
(Libyan Arab Jamahiriya v United States of America)**

This case is still pending.¹

By Orders dated 6 September 2000, Guillaume P fixed the time-limit for the United Kingdom and the United States of America to file the Rejoinders on 3 August 2001.

HISTORY OF THE PROCEEDINGS

On 3 March 1992, Libya filed in the Registry of the Court two separate Applications instituting proceedings against the United Kingdom and the United States. The cases concerned disputes on the interpretation or application of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation dated 23 September 1971.

In the Applications, Libya referred to charges made by the Lord Advocate of Scotland and an American Grand Jury against two Libyan nationals suspected of having caused the destruction of Pan Am Flight 103 over the town of Lockerbie, Scotland on 21 December 1988, in which 270 people died. Following the charges, the United Kingdom and the United States had demanded that Libya surrender the alleged offenders for trial either in Scotland or in the United States and had seised the Security Council of the United Nations. By so doing, Libya maintained that the United Kingdom and the United States had breached their legal obligations under the Montreal Convention and had to cease those breaches. Libya added the following:

1. the Montreal Convention was the only instrument applicable to the destruction of the Pan Am aircraft over Lockerbie;
2. no other convention concerning international criminal law in force was applicable to such issues between itself and the United Kingdom, nor between itself and the United States;

¹ For background information on this case, refer [1999] *Australian International Law Journal* 338-340.

3. according to the Montreal Convention, it was entitled to try the alleged offenders itself.

On 3 March 1992, Libya asked the Court to indicate provisional measures to prevent further action by the United Kingdom and the United States to compel it to surrender the alleged offenders before any examination of the merits of the cases. However, by Orders of 14 April 1992, the Court referred to Security Council Resolution 748, which was adopted in the meantime under Chapter VII of the United Nations Charter, and found that the circumstances were not such as to require the exercise of its power to indicate such measures.

By Orders of 19 June 1992 the Court fixed 20 December 1993 as the time-limit for the filing of Memorials by Libya and 20 June 1995 as the time-limit for the filing of Counter-Memorials by the United Kingdom and the United States. Libya filed its Memorials within the prescribed time-limits. In response, the United Kingdom and the United States raised objections to the Court's jurisdiction and the admissibility of Libya's claims. *Inter alia*, the United Kingdom and the United States:

1. denied the existence of disputes between the Parties concerning the interpretation or application of the Montreal Convention; and
2. submitted that, even if Libya could make valid claims under that Convention, they were "superseded" by the Resolutions of the Security Council that, by virtue of the United Nations Charter, took precedence over all rights and obligations arising out of the Montreal Convention.

Libya presented written statements of its observations and submissions on the preliminary objections within the fixed time-limits and public sittings to hear the Parties' oral arguments were held from 13-22 October 1997.

In two separate Judgments delivered on 27 February 1998 on the preliminary objections, the Court held the following:

1. there existed disputes between the Parties concerning the interpretation or application of the Montreal Convention;
2. the Court had jurisdiction to hear the disputes on the basis of Article 14(1) of the Montreal Convention, which concerns the settlement of disputes over the interpretation or application of the

- provisions of the Convention;
3. the Libyan claims were admissible; and
 4. it was not appropriate, at that stage of the proceedings, for the Court to decide on the arguments of the United Kingdom and the United States that the Resolutions of the United Nations Security Council had rendered the claims without object.

By Orders dated 30 March 1998, the Court fixed 30 December 1998 as the time-limit for the filing of the Counter-Memorials of the United Kingdom and of the United States. The time-limit was subsequently extended to 31 March 1999 at the request of the United Kingdom and of the United States. The Counter-Memorials were filed within the time-limit thus extended.

By Orders dated 29 June 1999, the Court authorised the submission of Replies by Libya and Rejoinders by the United Kingdom and the United States, fixing 29 June 2000 as the time-limit for the filing of Libya's Replies. Libya's Replies were filed within the prescribed time-limits.